IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 20550 of 2007(U)

PETITIONER:

M.H.SULAIMAN, S/O.HASSAN RAWTHER, MUTHRANNAYIL, VANDIPERIYAR, PERIYAR VILLAGE, IDUKKI DISTRICT. REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SHAJAHAN, S/O.VAVUKHAN RAWTHER, MAVUNKAL, ERUMELY, KOTTAYAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DEPUTY DIRECTOR OF PANCHAYATH, KOTTAYAM.**

3. **DISTRICT COLLECTOR, KOTTAYAM,**

4. **ERUMELY GRAMA PANCHAYATH (SPECIAL GRADE), REPRESENTED BY ITS SECRETARY, ERUMELY P.O., KOTTAYAM DISTRICT.**

BY ADV. SRI.MOHAN JACOB GEORGE for R4

BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANZAR for R1&R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.20550/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF LETTER ISSUED BY THE RESPONDENT-PANCHAYATH TO THE PETITIONER DTD. 31/10/2006.**

EXT.P2: **COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 29/12/2006.**

EXT.P3: **COPY OF THE LAND VALUE CERTIFICATE OF THE PROPERTY ISSUED BY THE DISTRICT COLLECTOR.**

EXT.P4: **COPY OF THE LETTER FROM THE 4TH RESPONDENT TO THE DISTRICT COLLECTOR.**

EXT.P5: **COPY OF THE EXPLANATION GIVEN BY THE DISTRICT COLLECTOR TO THE PANCHAYATH DTD. 28/03/2007.**

EXT.P6: **COPY OF THE LETTER ISSUED BY THE DISTRICT COLLECTOR TO THE 4TH RESPONDENT.**

EXT.P7: **COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND 4TH RESPONDENT DTD. 30/03/2007.**

EXT.P8: **COPY OF THE REQUEST SUBMITTED BY THE PETITIONER THROUGH HIS POWER OF ATTORNEY DTD. 5/06/2007.**

/TRUE COPY/

P.S.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

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W.P.(C)No.20550 OF 2007

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DATED THIS THE 5TH NOVEMBER, 2007

J U D G M E N T

Even though the Panchayat was directed twice to file counter affidavit, it is seen that till date no counter affidavit has been filed.

2. Heard Sri.Vinoy Varghese Kallummoottil, counsel for the petitioner and Sri.Mohan Jacob George, counsel for the Panchayat.

3. Drawing my attention to Ext.P6 letter of clarification issued by the Collector and also to Ext.P7 agreement, the learned counsel for the petitioner submitted that it is absolutely unfair on the part of the Panchayat to stand in the way of the petitioner cutting and removing the rubber trees which stand on the property which the petitioner had sold to the Panchayat. In Ext.P6, the District Collector has clarified that the value fixed by him for the property which was sold to the Panchayat does not take in the value of the rubber trees.

4. Mr.Mohan Jacob George, counsel for the Panchayat submits that the Panchayat does not dispute the existence of the agreement with the petitioner. He suggested that since the agreement is not disputed by the Panchayat, it is for the Panchayat authorities to implement their own order Ext.P7.

5. It is obvious that it was the District Collector who fixed the

price payable by the Panchayat for the property which was sold to the Panchayat by the petitioner. The very same District Collector has now clarified under Ext.P6 and that too in response to a query by the Panchayat that the price fixed by him does not take in the value of the rubber trees. It is thus clear that the petitioner is entitled to cut and remove the trees in question, since those trees continue to be the petitioner's property notwithstanding the sale in favour of the Panchayat.

6. Under the above circumstances, I allow the Writ Petition and direct the Panchayat to issue necessary permits for cutting and removing the rubber trees standing on the property in question and thereby facilitate cutting and removal of the trees by the petitioner. Needful in this regard will be done by the Panchayat at the earliest and at any rate within three weeks of receiving copy of this judgment. Once the petitioner receives communication of the Panchayat's decision in the matter, the petitioner will complete the cutting and removal of the trees in question within one week thereafter.

(PIUS C.KURIAKOSE, JUDGE)

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